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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,733	07/25/2007	D'art Daniel David Braeder	679-009	9559
22429	7590	01/16/2009	EXAMINER	
LOWE HAUPTMAN HAM & BERNER, LLP			ARROYO, CESAR D	
1700 DIAGONAL ROAD				
SUITE 300			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22314			4117	
			MAIL DATE	DELIVERY MODE
			01/16/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/598,733	BRAEDER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	CESAR ARROYO	4117	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 September 2006.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 22-39 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 22-39 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 08 September 2006 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>09/08/2006</u> .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 31 recites the limitation "the laminae" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22-25, 27-32, 34-37 rejected under 35 U.S.C. 102(b) as being anticipated by Fukushima, U.S. 4,790,429. In regards to claim 22, Fukushima, Fig. 1a and 1b, discloses a one-use dispensing device for separately storing and dispensing two substances comprising:

- a respective flexible receptacle for each substance (6)
- a line of fold extending over the device between the receptacles (4)
- said device being foldable about said line of fold so that the receptacles are superposable (see Fig. 1c)
- a respective rupturable outlet defined for each receptacle (7)
- said outlets converting towards the line of fold

-whereby when the device is folded about said line of fold, said outlets are superposed for dispensing and mixing the substances when the receptacles are squeezed (see Fig. 1c and see column 1, lines 54-60)

In regards to claim 23, Fukushima, Fig. 1a and 1b, further discloses said receptacles being disposed such that one of said receptacles on one side of the line of fold is transposed minor image of the other receptacle on the other side of the line of fold and both being equidistant from the line of fold.

In regards to claim 24, Fukushima, Fig. 1a and 1b, further discloses each of said outlets includes a weakened region (see column 2, lines 37-54).

In regards to claim 25, Fukushima, Fig. 1a and 1b, further discloses each of said outlets includes a weakened region comprising a tear or rupture line (see column 2, lines 37-54).

In regards to claim 27, Fukushima, Fig. 1a and 1b, further discloses each outlet is adapted to comprise a narrow orifice (7) intermediate the length of the outlet such that when its respective receptacle is squeezed by the user, said respective substance contained therein will burst through said weakend region (see column 2, lines 37-54).

In regards to claim 28, Fukushima, Fig. 1a and 1b, further discloses indicia (1) indicating where a thumb and forefinger of a user should be positioned for use.

In regards to claim 29, Fukushima, Fig. 1a and 1b, further said device comprising two flexible laminae positioned adjacent one another and sealed together so as to define said two receptacles (see column 1, lines 60-69).

In regards to claims 30 and 31, Fukushima, Fig. 1a and 1b, further discloses the laminae being a flexible sheet member such as polyethylene or aluminum (see column 2, lines 30-33).

In regards to claim 32, Fukushima, Fig. 1a and 1b, further discloses said substances being squeezed from said device and meeting, said substances undergo a chemical or physical reaction (see lines 6-16).

In regards to claims 34 and 35, Fukushima, Fig. 1a and 1b, further discloses the receptacles contain foodstuff or pharmaceuticals (see lines 6-16, or lines 45-50).

In regards to claim 36, Fukushima, Fig. 1a and 1b, further discloses the device being adapted to be folded and manipulated by a user in a one-handed operation such that said outlets are easily aligned and said substances are simultaneously dispensed mixed and proportionately applied (see column 3, lines 14-17)

In regards to claim 37, Fukushima, Fig. 1a and 1b, further discloses the device wherein said outlets are positions at or adjacent to the side edges of the dispensing device.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushima, U.S. 4,790,429 as applied to claim 22 above, and further in view of Weisberg, U.S. 4,176,567. Fukushima teaches the limitations of claim 22 above, he does not teach how the tear line is formed. Weisberg teaches a method for forming vacuum formed tear lines on packages. It would have been obvious to one having ordinary skill in the art, at the time of invention, to have formed the tear line by a method of vacuum forming the tear line because it is common practice to do so.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushima, U.S. 4,790,429 as applied to claim 22 above, and further in view of Bollmeier, U.S. 3,074,544. While Fukushima teaches the limitations of claim 22 above, he does not teach the receptacles containing an epoxy resin in one receptacle and a hardener in the other. Bollmeier teaches a dual chambered one time use dispensing device that can contain inter-reactive materials like liquid epoxy resin in one and a curing agent and activator for the epoxy in the other. It would have been obvious to one having ordinary skill in the art to have provided the package as taught by Fukushima with the contents of the package as taught by Bollmeier, to supply a package that has the ability to dispense both epoxy and an activator at the same time for better mixing outside the package while preventing commingling of the two prior to use.

Claims 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushima, U.S. 4,790,429, and further in view of Bollmeier, U.S. 3,074,544. In regards to claim 38, Fukushima, Fig. 1a and 1b, teaches a device comprising a fold

line (4) about two receptacles (6) composed of a flexible material, each receptacle composed of an outlet (7) through which the contents can be squeezed, and the device being adapted to be folded about the fold line so that the receptacles are superposed. Fukushima does not teach the contents of the receptacles containing an epoxy in one receptacle and a hardener in the other. Bollmeier teaches a dual chambered one time use dispensing device that can contain inter-reactive materials like liquid epoxy resin in one and a curing agent and activator for the epoxy in the other. It would have been obvious to one having ordinary skill in the art to have provided the package as taught by Fukushima with the contents of the package as taught by Bollmeier, to supply a package that has the ability to dispense both epoxy and an activator at the same time for better mixing outside the package.

In regards to claim 39 Fukushima further discloses the device being adapted to be folded and manipulated by a user in a one-handed operation such that said outlets are easily aligned and said substances are simultaneously dispensed, mixed and proportionately applied (see column 3, lines 14-17).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CESAR ARROYO whose telephone number is (571)270-7817. The examiner can normally be reached on 0730-1700 Monday-Thursday, 0730-1600 Friday, Everyother Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naeem Haq can be reached on 571-272-6758. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. A./  
Examiner, Art Unit 4117

/Charles A. Fox/  
Primary Examiner, Art Unit 3652